

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

LAMONT LAPRADE,

Movant,

v.

**CIVIL ACTION NO. 5:05-00068
CRIMINAL ACTION NO. 5:03-00150-01**

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending is the motion of the United States to allow the movant to reinstate his appeal in Criminal Action Number 5:03-00150-01. (Doc. No. 138.) In support of the motion, counsel for the government states that the evidence put forth at the January 3, 2008, hearing before Magistrate Judge R. Clarke VanDervort persuaded the parties that defendant is entitled to the remedy discussed in United States v. Peak, 992 F.2d 39 (4th Cir. 1993).

In Peak, the Fourth Circuit Court of Appeals held that "a criminal defense attorney's failure to file a notice of appeal when requested by his client deprives the defendant of his Sixth Amendment right to the assistance of counsel, notwithstanding that the lost appeal may not have had a reasonable probability of success." Id. at 42. To remedy the violation, a district court should vacate the original judgment and enter a new judgment from which an appeal may be taken. Id.

For the reasons stated in the government's motion, the motion is hereby **GRANTED**. (Doc. No. 138.) The court hereby **VACATES** movant's original judgment order. (Doc. No. 51.) The judgment will be re-entered on this date by separate order. The Clerk is **DIRECTED** to file a Notice of Appeal in movant's criminal case on his behalf. In view of the above ruling, the court finds movant's pending Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. No. 74), as well as his motions to amend or supplement the same (Doc. Nos. 76, 81), to be **MOOT**. The Clerk is directed to remove movant's § 2255 civil action (5:05-00068) from the court's active docket.

The Clerk is further directed to send copies of this Memorandum Opinion and Order to counsel of record and to movant.

It is **SO ORDERED** this 30th day of January, 2008.

ENTER:

David A. Faber
David A. Faber
United States District Judge